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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

WALTER L. WAGNER, an individual,	:	
Plaintiff,	:	Case No. 2:11-cv-784-CW-PMW
v.	:	DEFENDANT WORLD BOTANICAL GARDENS, INC.'S SECOND MOTION TO DISMISS.
PRESTON MICHIE, an individual, KENNETH FRANCIK, an individual, LESLIE COBOS, an individual, MARK ROBINSON, an individual, ANNETE EMERSON, an individual, STEVE BRYANT, an individual, and WORLD BOTANICAL GARDENS, INC., a Nevada corporation,	:	
	:	District Judge Clark Waddoups
	:	Magistrate Judge Paul M. Warner
Defendants.	:	

Defendant World Botanical Gardens, Inc, a Nevada corporation ("Defendant WBGI"), by
and through its attorneys of record and pursuant to the *Federal Rules of Civil Procedure*
(hereinafter "Rule" or "Rules") 12(b)(6) and DUCivR 7-1, submits Defendant World Botanical
Gardens, Inc.'s Second Motion to Dismiss.

Magistrate Paul M. Warner issued a *Report and Recommendation* on March 5, 2012 addressing Defendant WBGI's arguments that Plaintiff's claims are barred under the doctrine of issue preclusion. The Court considered the preclusive effects of three state court decisions and found each element of issue preclusion satisfied, except the finality of the aforementioned three state court decisions.

Defendant WBGI moves to dismiss Plaintiff's Complaint based on proof of the finality of two of the three state court decisions referenced in the *Report and Recommendation*. Defendant WBGI's Second Motion to Dismiss is accompanied by Defendant WBGI's Memorandum in Support of Defendant WBGI's Second Motion to Dismiss submitted concurrently herewith.

DATED this 4th day of April, 2012.

RICHER & OVERHOLT, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **DEFENDANT**
WORLD BOTANICAL GARDENS, INC.'S SECOND MOTION TO DISMISS to be
delivered to the following in the manner and on the date below indicated:

- Mail
- Fax
- Email
- Hand Delivery

Walter L. Wagner
532 N 700 E
Payson, Utah 84651
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(Pro Se Plaintiff)

DATED this 4th day of April, 2012.

Patl F. Hill